

1 THE ARNS LAW FIRM
2 ROBERT S. ARNS (65071)
(rsa@arnslaw.com)
3 JONATHAN E. DAVIS (191346)
(jed@arnslaw.com)
4 STEVEN R. WEINMANN (190956)
(srw@arnslaw.com)
5 515 Folsom Street, 3rd Floor
6 San Francisco, CA 94105
7 Tel: (415) 495-7800
Fax: (415) 495-7888

8 JONATHAN JAFFE LAW
9 JONATHAN M. JAFFE (267012)
(jmj@jaffe-law.com)
10 3055 Hillegass Avenue
11 Berkeley, CA 94705
12 Tel: (510) 725-4293
Fax: (510) 868-3393

Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

18 ANGEL FRALEY; PAUL WANG; SUSAN
19 MAINZER; JAMES H. DUVAL, a minor, by
20 and through JAMES DUVAL, as Guardian ad
21 Litem; and W.T., a minor, by and through
RUSSELL TAIT, as Guardian ad Litem;
individually and on behalf of all others
similarly situated,

22 Plaintiffs,

23 v.

24 FACEBOOK, INC., a corporation; and DOES
25 1-100,

26 Defendants.

COOLEY LLP
MICHAEL G. RHODES (116127)
(mrhodes@cooley.com)
MATTHEW D. BROWN (196972)
(brownmd@cooley.com)
JEFFREY M. GUTKIN (216083)
(jgutkin@cooley.com)
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222

Attorneys for Defendant Facebook, Inc.

Case No. CV 11-01726 RS

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF REVISED SETTLEMENT**

DATE: October 25, 2012

TIME: 1:30 p.m.

JUDGE: Hon. Richard Seeborg

COURTROOM: 3

NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL OF REVISED SETTLEMENT AGREEMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 25, 2012 at 1:30 p.m. or as soon thereafter as this Motion may be heard in the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 3, 17th Floor, plaintiffs Susan Mainzer, James H. Duval, and W.T., by and through Russell Tait, as Guardian ad Litem (“Plaintiffs”) and defendant Facebook, Inc. (“Facebook”) (collectively with Plaintiffs, “Parties”) will jointly move for preliminary approval of the Parties’ Revised Settlement Agreement and Release (“Revised Settlement”).

The Parties have substantially revised the settlement to address the issues raised by the Court and third parties. First, the Revised Settlement now provides for a \$20 million settlement fund, from which Class Members—Facebook users who have appeared in Sponsored Stories—may make claims to receive a cash payment of up to \$10.00. Second, the Parties have deleted the “clear sailing” provision, and Facebook may now oppose Plaintiffs’ counsel’s petition for fees and expenses. Third, the Parties have provided a greater level of detail regarding how the injunctive relief will be implemented as to all Class Members, and also have augmented the relief related to minor users (the Minor Subclass). Finally, regardless of the number of claims made or the amount of the attorneys’ fees the Court approves, none of the \$20 million will return to Facebook. After payment of all claims, fees, and administrative expenses, any remaining portion of the \$20 million will be awarded as *cy pres* to organizations proposed by the Parties and approved by the Court.

Accordingly, the Parties respectfully submit that the Revised Settlement substantially enhances the relief being provided to the Class, and easily meets the standard for preliminary approval. For these reasons, and the reasons set forth in each of the Parties’ concurrently filed Memoranda of Points and Authorities, the Parties jointly request that the Court preliminarily approve the Settlement.¹

¹ In a separate motion, Plaintiffs move the Court for provisional certification of a class and appointment of class representatives and counsel.

This Motion is based on this Notice of Motion and Motion; Defendant Facebook's Memorandum of Points & Authorities in Support of Joint Motion for Preliminary Approval of Revised Settlement and the accompanying Declarations of Christopher Plambeck, James C. Squires, Michael G. Rhodes, and Matthew D. Brown, including any exhibits thereto; Plaintiffs' Memorandum of Law in Support of Motion for Class Certification, Appointment of Class Counsel and Appointment of Class Representatives Pursuant to Motion for Preliminary Approval, and the accompanying Declarations of Robert Arns, Jonathan E. Davis, Phillip Allman, and Fernando Torres, including all exhibits thereto; all pleadings and papers on file in this matter, and such other matters as may be presented to the Court at the time of the hearing or otherwise.

Dated: October 5, 2012

THE ARNS LAW FIRM

/s/ Robert S. Arns

Robert S. Arns (65071)

THE ARNS LAW FIRM

ROBERT S. ARNS (65071)

(rsa@arnslaw.com)

JONATHAN E. DAVIS (191346)

(jed@arnslaw.com)

STEVEN R. WEINMANN (190956)

(srw@arnslaw.com)

515 Folsom Street, 3rd Floor

San Francisco, CA 94105

Tel: (415) 495-7800

Fax: (415) 495-7888

JONATHAN JAFFE LAW

JONATHAN M. JAFFE (267012)

(jmj@jaffe-law.com)

3055 Hillegass Avenue

Berkeley, CA 94705

Tel: (510) 725-4293

Fax: (510) 868-3393

Attorneys for Plaintiffs

1 Dated: October 5, 2012

COOLEY LLP

2 /s/ Michael G. Rhodes

3 Michael G. Rhodes (116127)

4 COOLEY LLP

MICHAEL G. RHODES (116127)

5 mrhodes@cooley.com

MATTHEW D. BROWN (196972)

6 brownmd@cooley.com

7 JEFFREY M. GUTKIN (216083)

jgutkin@cooley.com

8 101 California Street, 5th Floor

San Francisco, CA 94111-5800

9 Telephone: (415) 693-2000

10 Facsimile: (415) 693-2222

11 Attorneys for Defendant Facebook, Inc.

12 **ATTESTATION**
13 **(CIVIL LOCAL RULE 5-1(i)(3))**

14 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
15 document has been obtained from each of the other signatories.

16 Dated: October 5, 2012

17 /s/ Michael G. Rhodes

18 Michael G. Rhodes

19 1286422/SF